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IN THE

# SUPREME COURT OF THE UNITED STATES

Term, 1961

No. 15672

J. PAUL SCOTT, Petitioner

vs.

UNITED STATES OF AMERICA, Respondent

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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J. PAUL SCOTT, *Petitioner,*

*v.*

UNITED STATES OF AMERICA, *Respondent.*

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

Petitioner, J. Paul Scott, respectfully prays that this Honorable Court cause a Writ of Certiorari to be issued to review the final Order and Judgment of the United States Court of Appeals for the Sixth Circuit, which judgment was entered on June 26, 1964.

## OPINION BELOW.

The opinion of the United States Court of Appeals for the Sixth Circuit is reported at ——— Fed. 2d ———.

## JURISDICTION.

The judgment of the United States Court of Appeals for the Sixth Circuit was made and entered on June 26, 1964. A copy of the opinion is appended to this petition and appears in the Appendix at page 10, hereof. The jurisdiction of this Court is invoked under 28 USC 1254(1).

## QUESTION PRESENTED.

Your Petitioner entered a plea of guilty on January 31, 1957, to a charge of bank robbery, 18 USC 2113, and a charge of unlawful possession of machine guns, 18 USC 641. He received the maximum sentence of thirty (30) years. This plea was entered with the "advice" of counsel. The only question involved is

> (1) Whether or not, at the time Petitioner entered his plea of guilty, he did so with the effective assistance of counsel, as is guaranteed by the Sixth Amendment to the United States Constitution.

Both the District Court (Eastern District of Kentucky, at Lexington) and the Circuit Court of Appeals answered this question in the affirmative.

## CONSTITUTIONAL PROVISION INVOLVED.

United States Constitution, Amendment No. VI, which is set forth in the Appendix at page 9.

## STATEMENT.

The Petitioner, J. Paul Scott, instituted this proceeding on February 7, 1963, under 28 USC 2255, by moving the District Court to vacate the conviction and judgment upon count 1 and count 2 of Indictment No. 8730 filed against him on January 15, 1957, on the ground that his convictions were obtained in violation of Amendments V and VI of United States Constitu-

tion in that he did not have the effective assistance of counsel.

The first count of Indictment No. 8730 charged that Don Roderick Scott, Petitioner J. Paul Scott and Earl Franklin Morris "did unlawfully conspire to commit an offense against the United States, to-wit, to unlawfully and by force enter the Farmers and Traders Bank, Campton, Kentucky, with intent to commit larceny therein; said bank being duly and legally authorized and chartered under the laws of the State of Kentucky, the deposits of which were insured by the Federal Deposit Insurance Corporation under Certificate No. 288."

The second count of the Indictment charged that on the 6th day of January, 1957, Don Roderick Scott, Petitioner J. Paul Scott and Earl Franklin Morris "did unlawfully and by force enter the Farmers and Traders Bank, Campton, Kentucky, with intent to commit larceny therein, which bank was duly and legally authorized and chartered under the laws of the State of Kentucky, the deposits of which were insured by the Federal Deposit Insurance Corporation under Certificate No. 288, in violation of the laws of the United States."

On January 31, 1957, Petitioner was arraigned and entered pleas of guilty to both counts of the Indictment. Sentence of five (5) years imprisonment was imposed on count 1 and twenty-five (25) years imprisonment on count 2, with the provision that they be served concurrently.

The Petitioner and his brother and co-defendant, Don Roderick Scott, were accompanied by Mr. H. M. Grigsby, an attorney of Springfield, Kentucky, their home town, and, upon inquiry by the Court, each of them represented to the Court that Mr. H. M. Grigsby was representing them as their attorney. The Petitioner, upon separate inquiry, represented to the Court that his attorney, Mr. Grigsby, had explained to him the charges contained in the Indictment, that he understood the charges on which he entered his plea of guilty and that he was not induced to enter such plea by any promise or assurance of any kind from any person and he was pleading guilty to the charges of his own free and voluntary accord.

The present proceeding came on for hearing before the District Court on July 29, 1963. At this hearing the Petitioner was present in person, having been brought from the prison where he is now confined, in order that he might testify in person on his own behalf. He was represented by Mr. Robert F. Stephens, a member of the Fayette County, Kentucky, Bar Association, who had been appointed by the Court for that purpose on February 7, 1963. The Petitioner testified at length and repudiated the statements he made to the Court at the arraignment, to show that he did not, in fact, understand the charges, and, in fact, had no effective assistance of counsel at the time he entered a plea.

## REASONS FOR GRANTING THE WRIT.

This Court is the last chance that this Petitioner has to see that his right to the effective assistance of counsel, as guaranteed by our Constitution, is protected. Time and time again this Court, and other Federal Courts, set out the facts necessary to satisfy this basic constitutional requirement.

In the famous case of Von Moltke v. Gillies, 332 U. S. 708, 68 Sup. Ct. 316, 92 L. Ed. 308, Mr. Justice Black stated that, *prior to trial*, an accused is entitled to rely upon his counsel to make an independent examination of:

1. The facts and circumstances.
2. The pleadings.
3. The law.

In the case of Brubaker v. Dickson, 310 Fed. 2d 30, the Court stated that when a petitioner, under provisions of 28 USC 2255, alleges a lack of effective counsel, the critical tests are as follows:

1. Did the defendant have a possible defense which was presented?
2. Did defendant's counsel consult sufficiently with him?
3. Did defendant's counsel adequately investigate the facts?
4. Did defendant's counsel adequately investigate the law?

Right to counsel means *conscientious* service of an attorney, and not a perfunctory performance appearance.

In this case, the record before this Court shows clearly that the Petitioner, himself, testified that he did not understand the nature of the charges, that he was under pressure by his family to plead guilty, that he did not consult with the attorney who "advised" him to plead guilty, and that he did have a defense. Petitioner's testimony is corroborated by a co-defendant.

More importantly, however, is the testimony of that attorney, himself, as elicited at the trial of this cause before the District Court. By that testimony, the following *facts* appear which are pertinent and controlling to the question herein involved. They are as follows:

1. That in 31 years of law practice, he had only one criminal case in Federal Court.
2. That he was not familiar with Federal statutes or Federal criminal procedure.
3. That he failed to read the specific statutes under which Petitioner was charged
4. That he failed to do any legal research.
5. That he only talked a few minutes with Petitioner about the facts.
6. That his representation of the Petitioner was conditioned upon a plea of guilty being made.
7. That he made no statement to the Trial Judge on behalf of Petitioner.
8. That he made *no* formal preparation for the case.
9. That he never explained the charges, in detail, to the Petitioner.

10. That he never considered the possibility of a defense.
11. That he never told Petitioner of the maximum penalties involved.

This evidence is undisputed and comes from the attorney, himself. It is before this Court in the certified record. The Circuit Court of Appeals simply *ignored* this testimony in its decision.

The writer of this petition is not attacking, as the Circuit Court said, "errors which may have been made by counsel." What is being attacked is the fact that, *by his own testimony*, the attorney who advised Petitioner to plead guilty, did so without one iota of preparation—factual or legal. This is certainly an error—but it is far more than that. It is simply a complete lack and failure to render that type of assistance required by our Constitution.

## CONCLUSION.

The writer of this petition is Court appointed and has been, from the moment the initial petition to vacate sentence was filed. The writer is aware that much public feeling exists against this Petitioner, and is further aware that this proceeding is not the first attempted by Petitioner. However, the facts simply cannot be denied. The attorney gave petitioner the advice to plead guilty and did so without any preparation of any kind. His testimony—*which is undisputed*—clearly proves this. It is hoped that this Court will not simply accept the findings of fact of the lower

court that Petitioner was afforded "conscientious assistance." It is hoped that this Court will consider the *facts*, as set out in the record and will apply the law as set out. If so, Petitioner is confident that this writ will be granted.

For the reasons set out above, petitioner respectfully submits that this petition for Writ of Certiorari should be granted.

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